

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

<b>CHRISTINE MOSQUITO, as Executrix of</b>	)	
<b>the Estate of QUINTON D. MOSQUITO,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>Vs.</b>	)	<b>Case Number CV-09-277-HSO-JMR</b>
	)	
<b>PATE STEVEDORE CO., INC.;</b>	)	
<b>PASCAGOULA-MOSS POINT</b>	)	
<b>STEVEDORES, ILA PENSION PLAN;</b>	)	
	)	
<b>Defendant.</b>	)	

**AMENDED COMPLAINT**

**Jurisdiction**

This action is brought pursuant to 29 USC Sections 1132(a)(1)(B), (a)(3)(e)(1); [ERISA Sections 502(a)(1)(B), (a)(3) and (e)(1)]. Jurisdiction is founded on 28 USC Sections 1331 and 1343(1)(2)(3)(4) and the aforementioned statutory and constitutional provisions..

This cause of action for injunctive or other equitable relief to address violations of the Employment Retirement Income Security Act, hereinafter referred to as “ERISA”, and a claim for benefits under an ERISA plan, pursuant to 29 USC Sections 1132(a)(1)(B).

**COUNT I**

1. Plaintiff re-allege and re-adopt the foregoing paragraphs as if fully set forth herein.

2. The Plaintiff is the Estate of Quinton D. Mosquito, which is being probated in Mobile County, Alabama.

3. Upon information and belief, the Defendant, Pate Stevedore Co., Inc., is and at all times pertinent hereto, a corporation or other legal entity doing business in the State of Alabama and Mississippi.

4. Upon information and belief, the Defendant, Pascagoula-Moss Point Stevedores, ILA Pension Plan, is, and at all times pertinent hereto, a corporation or other legal entity doing business in the State of Alabama and Mississippi.

5. Quinton Mosquito received payments under the Pension Plan he had with the Defendants, which is administered under ERISA.

6. Quinton Mosquito began receiving benefits from the Defendants in approximately 1986.

7. Around November 16, 1995, Quinton Mosquito disappeared and the last payment received under the Plan was for January 1996. The Defendants have not made any payments since the January 1996 payment.

8. The Probate Court of Mobile County issued an order dated November 10, 2004, wherein Quinton Mosquito was declared dead on October 28, 2003.

9. After several requests, the Defendants have failed and/or refused to make any payments to which Quinton Mosquito is entitled to under the Plan.

10. The Plaintiff has exhausted all of her administrative remedies.

11. In the alternative, Quinton D. Mosquito is still alive, entitled to receive benefits and the estate can be converted back to a conservatorship.

WHEREFORE, the Plaintiff respectfully requests judgment against the Defendants, Pate Stevedore Co., Inc. and Pascagoula-Moss Point Stevedores, ILA Pension Plan, for any and all benefits to which the Plaintiff is entitled to under the Plan, plus attorney's fees, interest, costs, and such further relief to which the Plaintiff may be entitled, the premises considered.

**COUNT II**

12. Plaintiff re-allege and re-adopt the foregoing paragraphs as if fully set forth herein.

13. Defendants have been unjustly enriched by the amount they have failed and/or refused to pay the Plaintiff at the Plaintiff's expense and to Plaintiff's detriment by failing to pay Plaintiff due under the pension plan.

14. Jurisdiction over this state law claim is based on this Court's ancillary jurisdiction over matters which are sufficiently related to the original claim.

WHEREFORE, the Plaintiff respectfully requests judgment against the Defendants, Pate Stevedore Co., Inc. and Pascagoula-Moss Point Stevedores, ILA Pension Plan, for any and all benefits to which the Plaintiff is entitled to under the Plan, plus attorney's fees, interest, costs, and such further relief to which the Plaintiff may be entitled, the premises considered.

s/ Jason C. Johnston

Jason C. Johnston  
Attorney for Plaintiff

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**CERTIFICATE OF SERVICE**

I hereby certify that on this the 25<sup>th</sup> day of August 2009, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Vincent J. Castigliola, Jr.  
H. Benjamin Mullen  
Bryan, Nelson, Schroeder,  
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s/ Jason C. Johnston

Jason C. Johnston